

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

RONALD P. PASSATEMPO, TRUSTEE, On
Behalf of the Samuel Pietropaolo Irrevocable
Trust, SAMUEL PIETROPAOLO,
GRANTOR to the Samuel Pietropaolo
Irrevocable Trust and PATRICIA D.
PIETROPAOLO, BENEFICIARY of the
Samuel Pietropaolo Irrevocable Trust,

Plaintiffs,

v.

FREDERICK V. MCMENIMEN III, BARRY
G. ARMSTRONG, NEW ENGLAND
ADVISORY GROUP, LLC, 1717 CAPITAL
MANAGEMENT COMPANY,
NATIONWIDE PROVIDENT (f/k/a
Provident Mutual Life Insurance Company)
and NATIONWIDE FINANCIAL
SERVICES, INC.,

Defendants.

CIVIL ACTION NO.
05-cv-10118-GAO

ANSWER OF DEFENDANT BARRY G. ARMSTRONG

Defendant Barry G. Armstrong hereby answers the plaintiffs' complaint as follows:

Parties

1. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.
2. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.
3. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.
4. The Defendant denies.

5. The Defendant denies.

6. The Defendant denies.

7. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

8. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

9. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

Facts

10. The Defendant restates and incorporates his answers to the previous answers.

11. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

12. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

13. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

14. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

15. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

16. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

17. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

18. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

19. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

20. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

21. The Defendant denies.

22. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

23. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

24. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

25. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

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39. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

40. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

41. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

42. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

43. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

44. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

45. The Defendant denies.

46. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

47. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

48. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

49. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

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64. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

65. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

66. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

67. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

68. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

69. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

70. The Defendant admits that the documents in question appear to be forgeries. The Defendant does not have sufficient knowledge or information to admit or deny the remaining allegations contained in this paragraph.

71. The Defendant denies.

72. The Defendant denies.

73. The Defendant denies.

74. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

75. The Defendant does not have sufficient knowledge or information to admit or deny the remaining allegations contained in this paragraph.

76. The Defendant does not have sufficient knowledge or information to admit or deny the remaining allegations contained in this paragraph.

77. The Defendant does not have sufficient knowledge or information to admit or deny the remaining allegations contained in this paragraph.

78. The Defendant admits receiving correspondence from the Plaintiffs in July of 2004 but denies the remaining allegations of the paragraph.

79. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

Count I

80. The Defendant reasserts his answers to the above paragraphs.

81. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

82. To the extent this paragraph is asserted against this Defendant, the Defendant denies he owed any legal duty.

83. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

84. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

85. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

86. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

Count II

87. The Defendant reasserts his answers to the above paragraphs.

88. The Defendant denies that McMenimen was his agent. As for the remaining allegations, the Defendant does not have sufficient knowledge or information to admit or deny.

89. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

90. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

91. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

92. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

93. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

94. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

95. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

96. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

Count III

97. The Defendant reasserts his answers to the above paragraphs.

98. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

99. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

100. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

101. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

102. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

103. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

104. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

Count IV

105. The Defendant reasserts his answers to the above paragraphs.

106. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

107. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

108. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

109. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

110. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

111. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

112. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

113. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

Count V

114. The Defendant reasserts his answers to the above paragraphs.

115. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

116. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

117. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

118. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

Count VI

119. The Defendant reasserts his answers to the above paragraphs.

120. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

121. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

122. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

123. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

Count VII

124. The Defendant reasserts his answers to the above paragraphs.

125. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

126. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

127. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

128. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

Count VIII

129. The Defendant reasserts his answers to the above paragraphs.

130. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

131. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

Count IX

132. The Defendant reasserts his answers to the above paragraphs.

133. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

134. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

135. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

136. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

Count X

137. The Defendant reasserts his answers to the above paragraphs.

138. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

139. The Defendant does not have sufficient knowledge or information to admit or deny the allegations contained in this paragraph.

140. Paragraph 140 constitutes a conclusion of law that does not require an answer. To the extent an answer is required, the Defendant denies.

141. To the extent this paragraph is asserted against this Defendant, the Defendant denies.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiffs fail to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiffs' allegations with respect to Mr. Armstrong are wholly insubstantial, frivolous and not advanced in good faith.

THIRD AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred by his own acts of bad faith and by the Plaintiffs and the contributory and comparative negligence of the co-defendants.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiffs are estopped from recovery in this matter as his claims are barred by laches.

FIFTH AFFIRMATIVE DEFENSE

The claims against this Defendant are barred as they are the result of fraud including but not limited to the forging of documents that purport to establish that the Defendant played a role in events detailed in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred by operation of the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims fail pursuant to operation of the economic loss doctrine.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiffs' Complaint is barred because the Plaintiffs, by their actions, have waived any rights as to the Defendant.

NINTH AFFIRMATIVE DEFENSE

The Plaintiffs have not met the jurisdictional requirements set forth in Chapter 93A.

WHEREFORE, Defendant Barry Armstrong requests that this Honorable Court:

- (a) Dismiss the Plaintiffs' claims against him;
- (b) Award the Defendant his costs and attorney's fees; and
- (c) Award the Defendant any other relief which this Court deems just.

Respectfully submitted,

Barry Armstrong,

By his attorneys,

/s/ Timothy O. Egan
Robert T. Gill, BBO#192080
Timothy O. Egan, BBO#637992
PEABODY & ARNOLD LLP
30 Rowes Wharf
Boston, MA 02110
(617) 951-2100

Dated: January 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2005, I served a copy of the foregoing on all counsel with an appearance in this case by first class mail.

/s/ Timothy O. Egan
Timothy O. Egan